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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,201	03/26/2004	Daniel Jean		8675

7590

01/11/2006

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EXAMINER

OKEZIE, ESTHER O

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/810,201	DANIEL JEAN	
	Examiner	Art Unit	
	Esther O. Okezie	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Response to Amendment

The amendment filed on 10/26/05 and the remarks presented therewith have carefully considered. Applicant's arguments with respect to claims 1 and 2 have been considered but are not persuasive.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Blum. Blum discloses a shovel comprising; a handle 1, a shovel 4, a connecting element 6 to fixedly connect said shovel part and releasably connect said handle; a plurality of clips (detents 10 and 11); said clips being releasably engaged to said connecting element and to said handle (col. 2, lines 14-20); said connecting element having a plurality of holes through which pass said clips (fig 4); said connecting element so configured as to be orientable in relation to said handle so as to allow said shovel part to be oriented in a variety of ways in relation to said handle by using combinations of said clips engaging through specific holes combinations of said connecting element and into said handle with each

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specific combination providing a specific mode; said connecting element in cooperation with said handle and said shovel part capable of the following modes of operation :

- a. a shovel mode (figs 2 and 3)
- b. an anchor mode (fig 2).
- c. a folded mode which allows said anchor shovel to be more compact (fig 1).

The shovel handle 1 is fixed.

2. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by Duffy. Duffy discloses a method including utilizing a shovel 90 as an anchor (see fig. 2); said shovel is anchored into the ground (fig 2); a cable 124 from a hoist (drum 92) on a vehicle is attached onto the handle 88 of the anchor shovel (col. 6, lines 17-26); when said hoist is being activated, tension in said cable further engages the shovel part of the anchor shovel into the ground to increase said anchor shovel's anchoring ability (claims 1,2,13).

Response to Arguments

Applicant's arguments with respect to claims 1 and 2 have been fully considered but they are not persuasive.

Applicant has argued Blum discloses a shovel with a dustpan configuration which cannot be used effectively as a shovel because of its perpendicular orientation in relationship to the shaft of the shovel. In response, numerous shovels include a flat edge of dustpan configuration as disclosed by Blum and numerous shovels include a shaft that is perpendicular to the shovel member (see US Patents 2,318,277; 2,823,470;

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6,098,292). This configuration would not render the shovel of Blum ineffective in transferring material and/or anchoring.

Applicant has argued that the lugs Blum discloses for pivoting the shovel for adjustable positions of use would be inadequate as a means to hold the shovel in position because the lugs would provide frictional pressure too strong for the user to effectively move the shovel through various positions. In response, the argument is unsubstantiated. Blum clearly provides lugs 8 and 9 and for elevating and lowering the shovel and these lugs are easily adjusted by detents 10 and 11 so that the shovel can be easily moved by the user to position the shovel (col. 2, lines 1-20).

Applicant has argued that the shovel of Blum cannot be used effectively in shovel, anchor, or folded mode. In response, Blum clearly discloses the device used as a shovel (fig 3; col. 1, lines 1-39). Figure two of Blum discloses the device is equally capable of use as an anchor insofar as the applicant's disclosure of an "anchor mode" shown in figure two of the disclosure. Finally figure one of Blum discloses the device in folded mode (col. 1, lines 45-47).

Applicant has argued Duffy does not disclose a shovel that can be used as anchor. In response Duffy discloses a shovel (90) anchored into the ground, the shovel handle attached to a cable (124) and connected to a hoist (92) on a vehicle (col. 6, lines 17-26); when said hoist is being activated, tension in said cable further engages the shovel part of the anchor shovel into the ground to increase said anchor shovel's anchoring ability (see claims 1,2,13 of Duffy).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO 1/7/06



EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600